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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SUCCESSFACTORS, INC.,

Plaintiff,

v.

SOFTSCAPE, INC.,

Defendant.

Case No.: C-08-1376 (CW)

**DECLARATION OF SUSAN MOHR
IN SUPPORT OF DEFENDANT
SOFTSCAPE, INC.'S BRIEF
ADDRESSING DISCOVERY
DIFFERENCES**

Date: April 14, 2008

Time: N/A

Place: Courtroom 2

Honorable Claudia Wilken

1 I, SUSAN MOHR, declare as follows:

2 1. I am General Counsel for defendant Softscape, Inc. ("Softscape"). I have
3 personally observed, directed or confirmed the occurrence of each action described in this
4 declaration. I have personal knowledge of the facts set forth in this declaration, except for those
5 matters that are stated on information and belief, and as to those matters I believe them to be true.
6 If called as a witness, I could and would competently testify to the matters stated herein.

7 2. Described below are the measures Softscape has taken to comply with its
8 obligations under federal law to take such steps that are reasonably necessary to preserve
9 Electronically Stored Information that may potentially be relevant and discoverable.

10 3. Softscape, through its counsel, has retained FTI Consulting, Inc., a nationally-
11 recognized firm that specializes in helping companies to identify, locate and preserve relevant
12 Electronically Stored Information in accordance with applicable law. Softscape has worked
13 closely with FTI to identify and locate relevant Electronically Stored Information that is
14 reasonably known to exist and then to preserve such evidence.

15 4. Forensic ("mirror") images have been made of all computers known to have been
16 used to create or modify the Presentation at issue in this case.

17 5. Forensic images have also been made of all computers known to have been used to
18 access SuccessFactors' ACE 275 Marketing Demo account, which is at issue in this case.

19 6. Forensic images have been made of five Softscape servers; (i) the Exchange Server;
20 (ii) the Exchange Front End Server; (iii) the Intranet Server; (iv) the Business Intelligence Server;
21 and (v) the server that contains all employee "home directories." Several terabytes of information
22 have been forensically imaged.

23 7. The computers of eleven (11) Softscape employees have been forensically imaged,
24 including the computers of David Watkins, Alex Bartfeld, Matt Park, Mike Brandt, Christopher
25 Faust, and Dennis Martinek.

26 8. In addition to forensically imaging Softscape computers and servers that are known
27 or likely to contain relevant Electronically Stored Information, Softscape has also taken additional
28 steps to comply with its preservation obligations, including:

2.

DECLARATION OF SUSAN MOHR IN SUPPORT OF DEFENDANT SOFTSCAPE, INC.'S BRIEF
ADDRESSING DISCOVERY DIFFERENCES: CASE NO. C-08-1376 (CW))

- Backup tapes have been preserved from February 8, 2008 to the present;
- Recycling of Softscape's backup tapes has been suspended; and
- Any business practice that involves the routine destruction, recycling, relocation, or mutation of any potentially relevant material has been discontinued and/or disabled.

9. I have instructed all Softscape employees to preserve all information that is likely to be relevant to this action.

10. Softscape, with the assistance of FTI, will continue to take all steps that are reasonably necessary to identify, locate and preserve evidence that is likely to be relevant to this case. Moreover, Softscape will continue to fully adhere to its obligation to preserve all potentially relevant evidence that it discovers.

11. Pursuant to the Court's April 1, 2008 Order, Softscape has provided counsel for SuccessFactors with information regarding its IT systems and infrastructure.

12. On March 28, 2008, pursuant to the Court's Order, Softscape made its Vice President of Engineering Solutions, Joe Fougere, available to speak with SuccessFactors' counsel and its IT consultant to discuss various aspects of Softscape's IT systems and infrastructure. I am informed and believe that Mr. Fougere answered the questions posed to him by both SuccessFactors' counsel and its IT consultant for over two hours, and that he agreed to and did provide follow up information to those questions which required additional research.

13. Over the course of the past two weeks, Softscape has provided counsel for SuccessFactors with additional information related to its IT systems/infrastructure and has even provided information that did not fall within the scope of IT issues. Set forth below is a brief summary of the most pertinent information provided to SuccessFactors' counsel:

- Confirmation that the Presentation has been taken off the Intranet Server;
- Confirmation that Softscape's SMTP logs exist from May 2007 to the present and that those logs are being preserved;
- Information related to the internal, dynamic assignment of IP addresses at Softscape;

- 1 • Information related to Softscape's logs for Intranet access, Internet traffic and
2 DHCP;
- 3 • Information related to the year, version and release date of the Softscape Exchange
4 Server;
- 5 • Information relating to the scope and nature of Softscape's document retention
6 policy;
- 7 • A description of Softscape's practice for rotating and recycling backup tapes, and
8 confirmation that Softscape is preserving backup tapes;
- 9 • Verification of the number of laptop and desktop computers used by the Softscape
10 sales and executive team members;
- 11 • Information regarding Softscape's employees' abilities to create their own .pst
12 folders;
- 13 • A description of the Intranet Server (*i.e.*, the "IIS" or "Internet Information
14 Server");
- 15 • A description of how information was presented on the Intranet Server (*i.e.*, basic
16 HTML pages);
- 17 • Confirmation that Softscape has not utilized any type of autodelete or purging of
18 data with respect to its Intranet Server and E-mail Server;
- 19 • The identities of Softscape employees who were involved in the
20 creation/modification of the Presentation or who are known to have accessed
21 SuccessFactors' ACE 275 Marketing Demo;
- 22 • The identity of the forensic consultant retained to assist Softscape take reasonable
23 steps to identify, locate and preserve Electronically Stored Information that may be
24 relevant in this case;
- 25 • Confirmation that the computers known to have been used by Softscape employees
26 to create or modify the Presentation, or to access SuccessFactors' ACE 275
27 Marketing Demo, have been forensically imaged; and
28

- Confirmation that the Softscape servers known to contain or likely to contain relevant Electronically Stored Information have been forensically imaged.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. Executed April 14, 2008, at Wayland, Massachusetts.


SUSAN MOHR

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